Supreme Court of the United States.

No. 37.—October Term, 1904.

The National Cotton Oil Company et al., Plaintiffs in Error, vs. The State of Texas.	In error to the Court of Civil Appeals in and for the Third Supreme Judicial District of the State of Texas.

[February 27, 1905.]

This suit was brought under the Anti-Trust Acts of the State of Texas, to forfeit the license of the National Cotton Oil Company to do business in the State of Texas, for violating those acts. The defense is that they are repugnant to the Fourteenth Amendment of the Constitution of the United States.

The suit was instituted by the Attorney General of the State and the District Attorney of the Twenty-sixth Judicial District, and the petition alleged the following facts: The National Cotton Oil Company and the Southern Cotton Oil Company are New Jersey corporations, doing and transacting business in the State of Texas by reason of a permit issued to them respectively on the second day of May, 1900, and the third day of June, 1897.

The Taylor Cotton Oil Works is a Texas corporation doing, business in the State under a charter granted August 25, 1898. The said foreign corporations, from the date of their respective permits and the Taylor Cotton Oil Works from the date of its charter have been and are "engaged in the business of the manufacture and sale of cotton seed oil, cotton seed meal and the other by-products of cotton seed; that the business in which each and all of such corporations were engaged necessitated the purchase of cotton seed from which the products which they manufactured and sold were made, and that said cotton seed was an article and commodity of merchandise."

Each of them on or about the first of November, 1901, and on every day prior and subsequently thereto, has been engaged in the business of buying cotton seed in the various counties of the State, and on the first of November, 1901, the National Cotton Oil Company made and entered into a combination with each of the other companies and they with it, and each of them with various other persons, firms and corporations, whose names are to the defendant in error unknown, and the said corporations "became members of and parties to a pool, trust, agreement, confederation and understanding with each of the other of said corporations, firms and persons, whereby they did each for itself and with each other and all to-

gether agree to regulate and fix, and did regulate and fix, the price at which they would buy cotton seed; that they especially regulated and fixed the price of cotton seed throughout the State of Texas at $14.00 per ton, and agreed amongst and with each other that they would not give more than said $14.00 per ton for cotton seed in any of the towns and communities of the State of Texas." Whereby, "and by maintaining the agreement to regulate and fix the price of cotton seed aforesaid, the defendant (the National Cotton Oil Company) was guilty of a violation of the laws of the State of Texas," and in consequence has forfeited its permit to transact business in the State.

The cancellation and forfeiture of the permit was prayed, and that the oil company be enjoined from transacting business in the State. A demurrer was filed to the petition for insufficiency in law to entitle the State to any relief, and alleged against each of the Anti-Trust Acts of the State and the provisions of the Penal Code based thereon, that they violated section 1, article fourteen, of the amendments to the Constitution of the United States, in that the act of March 30, 1889, and the code provisions based thereon, deprived the company of the equal protection of the laws, because it was provided by section thirteen of said act and article 988 of the Penal Code that the said statutes "shall not apply to agricultural products or live stock while in the hands of the producer or raiser." And that the act of April 30, 1895, and certain sections of the Revised Statutes of Texas and of the Penal Code were likewise discriminatory because of the same exceptions, and the further exception that said statutes should not be held to "be understood or considered to prevent the organization of laborers for the purpose of maintaining any standard of wages;" and the act of May 25, 1899, because it was cumulative and a mere supplement to the others, and carried, therefore, the same unconstitutional discriminations.

All of the acts and code provisions are charged with depriving the oil company of its property without due process of law and in violation of the Fourteenth Amendment, in that the penalties are excessive and their provisions so vague and uncertain that the company is denied a resort to the tribunals of the country to defend its rights except on the condition that, if not successful, it shall subject its property to confiscation and forfeit its right to do business in the State.

It is also urged as a ground of demurrer that the act of 1895 violated a provision of the constitution of the State which prohibited a bill to contain more than one subject.

The demurrer was overruled. The company declined to answer further, and judgment was entered forfeiting the license or permit of the company, and enjoining the company from transacting any business in the State "except such business as may be and constitute interstate commerce."

The judgment was affirmed by the Court of Civil Appeals. A rehearing was denied and a writ of error from the Supreme Court refused. This writ of error was then granted.

Mr. Justice McKenna, after stating the case as above, delivered the opinion of the Court.

The charges made against the statutes of Texas are that they deny the oil company the equal protection of the law and take its property without due process of law. The answer to the first depends upon the effect of the statutes. The answer of the second involves their validity and broader considerations. We will deal with it first.

The specification in the demurrer of wherein the statutes deprive the oil company of its property without due process of law is indefinite and peculiar. It may be different from an attack on the validity of the statutes, but counsel have treated it as tantamount to such attack, and we will so treat it.

Defendant in error contends that it is not open to the oil company to attack the constitutionality of the statutes, either as discriminating against it or as depriving it of property without due process of law, and cites *Waters-Pierce Oil Company*, (177 U. S. 28.) Counsel for the company contests the application of that case; and we will assume (not decide) with them that it is not determinative of their contention.

The acts of 1889 and 1895 are set out at length in *Waters-Pierce Oil Company* v. *Texas*. The act of 1899, so far as the present question is concerned, is substantially the same as they. All of the acts are directed to the prohibition of combinations to restrict trade, or in any way limit competition in the production or sale of articles, or to increase or reduce their price in order to preclude a free and unrestricted competition in them. The various ways in which these purposes can be accomplished are enumerated and forbidden. Penalties are affixed to the violation of the acts, offending domestic corporations forfeit their charters, and offending foreign corporations forfeit their privileges to do business in the State.

There was also an act passed in 1903, which repealed all laws or parts of laws in conflict with it, and expressly repealed certain provisions of the Penal Code of the State, and the acts of 1895 and 1899. The right to recover penalties or to forfeit charters of domestic, or the permits of foreign corporations, for acts committed before the going into effect of the statute, was reserved.

The argument, which is directed against the validity of the statutes is drawn from extremes. It is difficult to present its elements in a concise way. Its ultimate foundation is the right of individuals and corporations as well, under the Constitution of the United States, to make con-

tracts and combine in business enterprises; and, it is argued, to prohibit them from so doing "in the ordinary way through the making of purchases and sales and the fixing of prices, is clearly to work a deprivation of property without due process of law and to impair the well-recognized liberty of contract, involved in the acquiring, using and dealing with property," assured by the Federal Constitution.

To support the argument the usages and necessity of business are adduced, and partnerships and their effect are brought forward as illustrations. There are some things which counsel easily demonstrate. They easily demonstrate that some combination of "capital, skill or acts" is necessary to any business development, and that the result must inevitably be a cessation of competition. But this does not prove that all combinations are inviolable or that no restriction upon competition can be forbidden. To contend for these extremes is to overlook the difference in the effect of actions, and to limit too much the function and power of government. By arguing from extremes almost every exercise of government can be shown to be a deprivation of individual liberty. It is common place to say that it is the purpose, and indeed duty, of government, to get all it can of good out of the activities of men, and limit or forbid them when they become or tend to evil. Of course, what is evil may not be always clear; but to be able to dispute the policy of a law is not to establish its invalidity. It is certainly the conception of a large body of public opinion that the control of prices through combinations tends to restraint of trade and to monopoly, and is evil. The foundations of the belief we are not called upon to discuss, nor does our purpose require us to distinguish between the kinds of combinations or the degrees of monopoly. It is enough to say that the idea of monopoly is not now confined to a grant of privileges. It is understood to include a "condition produced by the acts of mere individuals." Its dominant thought now is, to quote another, "the notion of exclusiveness or unity;" in other words, the suppression of competition by the unification of interest or management, or it may be through agreement and concert of action. And the purpose is so definitely the control of prices that monopoly has been defined to be "unified tactics with regard to prices." It is the power to control prices which makes the inducement of combinations and their profit. It is such power that makes it the concern of the law to prohibit or limit them. And this concern and the policy based upon it has not only expression in the Texas statutes; it has expression in the statutes of other States and in a well-known national enactment. According to them, competition, not combination, should be the law of trade. If there is evil in this it is accepted as less than that which may result from the unification of interests, and the power such unification gives. And that legislatures may so ordain this court has decided. (*United States* v. *Knight*, 156 U. S. 1; *United States* v. *Trans-Missouri*

Freight Association, 166 U. S. 290; *United States* v. *Joint Traffic Association*, 171 U. S. 505; *Northern Securities Co.* v. *United States*, 193 U. S. 197; *Swift & Co.* v. *United States*, *ante*, page .)

In *Smiley* v. *State of Kansas*, decided at this term, a statute of Kansas is passed on which is identical in effect, and even in words, in all that concerns the present controversy, with the Texas statutes. The statute was assailed as "an unwarranted attempt upon the part of the legislature to limit the rights of the individual in the matter of contracting and dealing with his fellow-men." The right which Smiley claimed was to combine with certain grain dealers, persons, companies and corporations, who were competitors, to pool and fix the price of grain in the town of Bison, and to prevent competition in the purchase and sale of grain at that place. We followed the ruling of the Supreme Court of the State in holding that the combination was within the prohibition of the statute; we concurred with that court in deciding that the prohibition was a valid exercise of the police power of the State.

It follows that the statutes of Texas do not deprive the oil company of its property without due process of law.

Next, as to the effect of the statutes.

The act of May 25, 1899, omits the discriminatory provisions of the prior acts, but, it is contended, that as the latter act is declared to be cumulative of the prior acts their discriminations are preserved and continued, and that under the code provisions the company may be criminally prosecuted, and that the excepted classes of the acts of 1889 and 1895 are exempt from prosecution. It is further urged whether such discrimination results from the statutes is for us to determine independently of what views the courts of the State may entertain of them and their relations.

Upon the last contention depends the mode of approaching the other, and we will dispose of it first. We cannot assent to it. There are cases in which we determine for ourselves the meaning of a State law, but this is not one of them. The contention of the company is that the statutes of the State discriminate against it; in other words, deny it the equal protection of the law, by forbidding it from doing what they permit others to do in similar circumstances—punish its acts and exempt from punishment the same acts when done by others. But the courts of the State are the tribunals appointed to administer the statutes and impose their penalties, and to do so they must necessarily interpret them. In other words, they are the tribunals to declare the meaning of the statutes, and if in declaring it they make the statutes discriminatory then may the statutes become unconstitutional. (*Olsen* v. *Smith*, 195 U. S. 332.)

What has the Supreme Court of Texas said of the statutes?

The Court of Civil Appeals in the case at bar expressed the following view:

"The trial court did not err in overruling appellant's demurrers. While it has been correctly held that certain provisions of the anti-trust statutes are unconstitutional, the Supreme Court, in the case of *The State of Texas* v. *The Shippers' Compress & Warehouse Co.*, (69 S. W. 61,) relying upon the case of *The Waters-Pierce Oil Co.* v. *The State of Texas*, (177 U. S. 28,) holds that so much of these statutes that authorize the canceling and forfeiture of a charter or permit to do business within the State of Texas are valid, and are not in violation of the Constitution."

The Supreme Court refused a writ of error, and thereby, as we understand the local rule to be, approved the views of the Court of Civil Appeals. Subsequently the Supreme Court expressed itself explicitly in *State of Texas* v. *Shippers' Compress and Warehouse Company*, (95 Texas, 603,) and the *State of Texas* v. *Laredo Ice Company*, (96 Texas, 461.)

The object in *State of Texas* v. *Shippers' Compress and Warehouse Company* was to forfeit the charter of the compress company for violating the Anti-Trust law of 1895, in that the incorporators combined "to restrict aids to commerce." The law was attacked as unconstitutional. To the contention the court said:

"The defendant insists that the law is unconstitutional, therefore void in whole, and will not support the action to forfeit the charter. Upon the same objection we held the Anti-Trust law of 1889 to be constitutional, and there is no such difference between the two laws as would affect the decision of this question. We believe that our decision is correct; that the law is not in contravention of the Constitution of the State, nor of the United States. (*Honck* v. *Brewing Assn.*, 88 Texas, 189.)"

The court then referred to *Connelly* v. *The Union S. & T. Co.*, (184 U. S. 540,) and in submission to its authority held the law of 1895, so far as it came within the terms of that case, invalid, and would not support an action by the State to recover a penalty for a violation of the law, nor would it, in suits between corporations and individuals, support a defense based upon the fact that the right of action originated in violation of the Anti-Trust law. "But," the court remarked, "to the extent that the statute of this State is not embraced in the decision of the Supreme Court of the United States, we shall adhere to our former decision that it is constitutional and valid, and therefore enforcible by the State."

That is, the court decided the act of 1895 was valid to the extent that it authorized the State to revoke the license of a foreign corporation and to forfeit the charter of a domestic corporation. The other provisions of the act were held invalid, and the right to make this distinction was based on *Waters-Pierce Oil Co.* v. *The State of Texas.*

State of Texas v. *Laredo Ice Co.* was instituted to recover penalties for the violation of the Anti-Trust law of 1899. The ice company was a domestic corporation, and it was proceeded against for having formed a combination to regulate and fix prices. In defense, the company asserted the unconstitutionality of the act.

It is provided in section 14 of the act of 1899 that the provisions of preceding sections and the fines and penalties provided for violations of the act shall be held and construed to be cumulative of all laws now in force in the State. It was contended, as it is contended here, that this provision made one law of the act and the act of 1895, and that the exemptions of the latter became part of the former and made it unconstitutional. In other words, the effect was (we quote from the opinion of the court) "thereby to give exemption from prosecution under the law of 1899 to those persons who are exempted by the provisions of the law of 1895." The Supreme Court of Texas rejected the contention. Its reasoning was not very direct or circumstantial, but it in effect held that the act of 1899 did not continue the provisions of the prior acts, whether constitutional or unconstitutional, merely because it was declared to be cumulative. And the court decided the law of 1899 to be constitutional, because it did not contain the discriminating features of the prior laws. Under the laws of Texas, therefore, combinations of the kind described in the various anti-trust laws, whether by agriculturalists or organized laborers or others, are forbidden and penalized and the oil company is not discriminated against.

It may be said that if the inequalities of prior anti-trust acts have been removed by the act of 1899, they still remain in the Revised Statutes of the State and in the Penal Code, and by those statutes and that code the excepted classes are exempted from indictment and punishment, while the oil company is subject to both. We need not consider the statutes referred to or consider how far this discrimination can exist, in view of the decision of the Supreme Court of the State in *State of Texas* v. *Laredo Ice Company*. Granting it can exist, the case at bar is not a criminal prosecution. It involves only the anti-trust laws and their prohibitions, and penalties. And in them, we have seen, by the effect of the act of 1899 there is no inequality of operation. It is the effect of that decision also that the laws of the State against combinations and trusts are formed into a harmonious system, of which the criminal provisions in other statutes and the code are a part, and that their provisions can be adjusted and reconciled so as to have constitutional operation.

Judgment affirmed.

Supreme Court of the United States.

No. 38.—October Term, 1904.

The Southern Cotton Oil Company et al., Plaintiffs in Error, vs. The State of Texas.	In error to the Court of Civil Appeals in and for the Third Supreme Judicial District of the State of Texas.

[February 27, 1905.]

Mr. Justice McKenna delivered the opinion of the Court.

The Southern Cotton Oil Company is a New Jersey corporation doing business in the State of Texas by virtue of a permit issued June 3, 1897, under the laws of the State. The object of this suit is to forfeit the permit of the company for the violation of the anti-trust statutes of the State. The violation of the statutes alleged against it is the same as that alleged against *The National Cotton Oil Company* in No. 37 The defenses are the same, and were presented by demurrer. The demurrer was overruled, and, the Southern Cotton Oil Company declining to plead further, judgment was entered forfeiting its permit to do business in the State, except such as might be and constitute interstate commerce. The judgment was affirmed by the Court of Civil Appeals. A rehearing was denied, and a writ of error from the Supreme Court refused. This writ of error was then sued out.

The questions are identical with those presented in No. 37, and on its authority the judgment of the Court of Civil Appeals is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.